JD(SF)–32-03
San Francisco, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO BRANCH OFFICE
DIVISION OF JUDGES

H & N FOODS INTERNATIONAL d/b/a
H & N FISH CO.

and

TEAMSTERS LOCAL 853, IBT, AFL-CIO

Cases 20-CA-30480
20-CA-30985
20-CA-31024
20-CA-31075

Jill Coffman, Atty.,
San Francisco, California,
for the General Counsel.

Michael E. Caples, Atty.,
Fitzgerald, Abbot & Beardsley, LLP,
Oakland, California for the Respondent.

Sheila K. Sexton, Atty.,
Beeson, Tayer & Bodine,
Oakland, California, for the Charging Party.

DECISION

Statement of the Case

John J. McCarrick, Administrative Law Judge. This case was tried in San Francisco, California on February 24 and 25, 2003 upon General Counsel's Amended Consolidated Complaint that alleged H & N Foods International d/b/a H & N Fish Co., (Respondent) violated Section 8(a)(1) and (5) of the Act by telling employees that they would not receive a pay raise due to the Union, failing to provide information to the Union relevant to its duty as exclusive collective bargaining representative, discontinuing its practice of conducting performance reviews of unit employees, discontinuing annual merit wage increases to unit employees, granting discretionary year-end bonuses to unit employees and withdrawing recognition from the Union.[1] Respondent timely denied any wrongdoing.[2] On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following:

[1] At the hearing, Counsel for the General Counsel filed a Motion to Amend Complaint. The Motion sought to amend the Complaint to allege Dave Hendershot and Hua Ngo as supervisors and agents, to allege additional violations of Section 8(a)(1) of the Act in paragraphs 6(b), 6(c) and 6(d), and to change the date of the alleged violation of Section 8(a)(5) of the Act in paragraph 9(b) from October or November 2002 to September or October 2002. Over Respondent's objection, I granted the Motion. *Payless Drug Stores, 313 NLRB 1220, 1220-1221 (1994); Pincus Elevator & Electric Co., 308 NLRB 684, 684-685 (1992); Sheet Metal Workers Local 91 (Schebler Co.), 294 NLRB 766, 774-775 (1989)*. Later in the hearing Counsel for the General Counsel withdrew paragraph 6(d) of the Amended Complaint.

Findings of Fact

I. Jurisdiction

Respondent, a California corporation with an office and place of business in San Francisco, California, engages in the non-retail distribution of fish and fish products where it annually purchases and receives goods valued in excess of $50,000 directly from points outside the State of California. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Teamsters Local 853, IBT, AFL-CIO (Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Facts

Respondent buys and sell fish in the wholesale market from three San Francisco locations: an office and storage facility on Bayshore Boulevard; a warehouse on Jerrald Avenue; and a facility on Pier 45 in Fisherman's Wharf. Respondent is divided into departments that include an operations department. The operations department is subdivided further and includes the traffic department. Respondent's drivers, who transport Respondent's products to their customers, work in the traffic department.

1. The 8(a)(1) Statements

On August 29, 2001, the Union filed a petition seeking to represent Respondent's truck drivers. In September 2001, during the course of a pre-election campaign meeting, Respondent's plant manager, Juan Rivera (Rivera), in response to an employee's question about pay raises, told drivers that, "money is there, but we had to wait for a union contract." Right after this meeting, as employees were walking through the warehouse, Rivera, responding to another employee question about why they were not getting raises said that the drivers, "messed it up. You could have waited, you should have waited. The money was there, you guys messed it up." On October 29, 2001, the Board certified the Union as the drivers' exclusive collective bargaining representative. After the Union was certified, the parties began negotiating for an initial contract in late November 2001. In November 2001 Rivera told a driver that they were "getting a raise after the union process is over . . . they needed to wait for the first contract so they can add the wages, the rates to the new contract increase." [3] Late in 2001 or in early 2002, Respondent's Director of Human Resources, Joyce Williams (Williams), during an employee meeting, in response to an employee's question about when they were getting raises said, "the company is negotiating with the Union . . . and we can't negotiate one-on-one. . . " At another drivers' meeting in March or April 2001, Respondent's owner, Hua Ngo (Ngo), in

[2] On October 18, 2002, Respondent filed a Motion for Summary Judgment with the Board. General Counsel filed a timely opposition. On February 21, 2003, the Board denied Respondent's Motion for Summary Judgment. Respondent renewed the Motion for Summary Judgment at the hearing, which I denied.

[3] Rivera denied making these statements. I credit the testimony of the three drivers who attributed these statements to Rivera. Rivera's statements are consistent with those Rivera said were made by an unnamed man hired by Respondent to address drivers at pre-election meetings. Rivera's statements are also consistent with the uncontroverted statements made by Williams and Ngo.

answering employees' questions about when they would get a raise said that he, "couldn't do anything at that time because of the Union" and that it was as though his hands were tied and "everything has to be handled through lawyers and the Union."

2. The Information Request

On October 23, 2001, the Union made an information request. By letter dated November 27, 2001, Respondent provided information to the Union and stated additionally:

> In order to gather the above information for you I consulted with several Company management employees only to earn what you yourself probably already know from having been around the drivers the last several months. The Company has for the last almost one year been buying up land and building a warehouse facility in Southern California. It will be up and running early next year.
>
> To date nothing is certain but it is possible that it could result in a permanent reduction in the number of driving jobs here. I am also hereby offering to meet and confer with you regarding this matter separately and/or in conjunction with these contract negotiations. As importantly, I am letting you know now so that the drivers can plan their lives accordingly. Though the Company has made no definite plans, it is possible that they will eliminate Class C driving jobs and Class C drivers.
>
> If you need additional information regarding any of the enclosed or the above please do not hesitate contacting me.

At the November 27, 2001 negotiation session, the Union asked how Respondent's Southern California operation would results in San Francisco layoffs. Respondent replied that they were unsure but that it might result in layoffs. On December 14, 2001, the Union made a further information request regarding the Southern California facility that provides in pertinent part:

> In order to develop intelligent bargaining proposals and to adequately represent the drivers at H & N Foods, Teamsters Local 853 hereby requests the following information regarding the Warehouse Facility currently being constructed in Southern California:
>
> - Location (address, city, etc.) of the facility;
> - Layout of the facility;
> - Projected area the facility will service;
> - Number of Company trucks (if any) to be domiciled at this facility;
> - Projected hours of operation for this facility; and,
> - Projected number of employees, including classifications at the facility.

Through its new lead negotiator, James Beard (Beard), Respondent refused to provide the requested information until December 4, 2002.

3. The Bonuses

Respondent has a past practice of giving its employees, including drivers, year-end bonuses in varying amounts. Because of a general wage freeze caused by the events of

September 11, employees' year-end bonuses were not given until early in 2002. Respondent and the Union negotiated over the amount of those bonuses and agreed on an amount the drivers would be paid for the 2001 bonus.

At the parties' last bargaining session on November 7, 2002, the subject of bonuses was raised again. Beard took the position that bonuses and reviews were to be given at Respondent's discretion. No agreement was reached concerning bonuses for 2002.[4]

In December 2002, Respondent granted year-end bonuses to drivers without notifying or bargaining with the Union over the amount of the bonuses.

4. Drivers' Performance Reviews and Wage Increases

Respondent had a practice of giving its drivers performance reviews in September and October followed by discretionary pay increases. Respondent prepared but did not present the drivers' evaluations in September or October 2002 nor did Respondent give its drivers discretionary pay raises in 2002.

During the course of bargaining, the parties did not discuss wages until late August 2002. Both the Union and Respondent proposed flat rates of pay for each class of drivers with periodic raises. The parties reached neither agreement nor impasse regarding wages.

At the September 25, 2002 bargaining session, Respondent told the Union it was going to evaluate its drivers. Union negotiator Jesse Casqueiro (Casqueiro) replied that the Union expected the reviews to be fair and not used as a campaign against the Union. I find there was no agreement between the parties concerning the subject of wage increases. Both Beard and Jacobsen testified there was an agreement that the annual wage increase would not be given in 2002. I do not credit their testimony. There is no documentary evidence that the parties reached such an agreement. Jacobsen's bargaining notes reflect only that the Union negotiators heard the language that would be told to the drivers during evaluations if they asked about wages: "that (wages) is being negotiated currently between the Union and Company." The Union bargaining notes, for the same session is devoid of any mention of an agreement regarding wage increases.

5. The Withdrawal of Recognition

In October 2002 driver Nguyen Duong (Nguyen) drafted and circulated a petition. The preamble to the petition stated, "We the following drives (sic) H & N Fish Want to Withdraw From the Union 853." Before he drafted the petition, Nguyen told three or four employees, "if we want a raise, we'll have to . . . we have to get out of the Union." Nguyen spoke to six employees who signed the petition, Mihn Ly, Pascual Bermudez, Raymond Mendenhall (Mendenhall), Pham Bang, Quan Ngu and Pas Yen Wong. Before they signed Nguyen told each of them, "it's been two years-that maybe we have to get out of the Union to get a raise"

[4] I do not credit Beards' testimony that the Union agreed that all future bonuses would be solely at Respondent's discretion. There is no documentary evidence that the parties reached such an agreement. Rather the Union bargaining notes reflect that the Union agreed only to the 2001 bonuses. Moreover, Beard's testimony is inconsistent with Respondent's last wage proposal that included a provision that future bonuses would be at Respondent's discretion.

and “it’s been a while since we’ve had a raise. Maybe if we can get out of the Union, we’ll get a raise.”

Driver Julio Canada testified that he spoke to Pascual Bermudez before he signed the petition and that Bermudez told him the petition was “to be able to get the Union out” and that “if we signed it, that they were going to give us a raise.”

On November 13, 2002, Nguyen and Mendenhall took the petition to the office of NLRB Region 20. There a Board agent told them that the wording on the petition was incorrect. After Nguyen and Mendenhall left the Regional office, Mendenhall drew a line through the words at the top of the petition, “We the following drives (sic) H & N Fish Want to Withdraw from the Union 853.” On November 13 or 14, 2002 Nguyen and Mendenhall showed Jacobsen the petition and told him it was to get out of the Union. They gave the petition to Jacobsen on November 15, 2002. On December 3, 2002, Nguyen told Jacobsen that a meeting with the Union had been set up on December 5, 2002, to give the Union the petition and tell them to go away. Nguyen also told Jacobsen that the drivers wanted to get out of the Union quickly so that they could get a raise.

Respondent withdrew recognition from the Union on December 4, 2002, based on its receipt of the petition with 11 signatures and based on conversations Jacobsen had with four of the drivers in late October or early November 2002. Jacobsen said he spoke with Nguyen, Mendenhall Minh and Calderon all of whom said they wanted out of the Union. At the time Respondent withdrew recognition, there were 17 drivers in the bargaining unit.

B. The Analysis

1. The 8(a)(1) Statements

a. The Law

It is well established that an employer is required to proceed with an expected wage or benefit adjustment as if the union were not on the scene.... An exception to this rule, however, is that an employer may postpone such a wage or benefit adjustment so long as it "[makes] clear" to employees that the adjustment would occur whether or not they select a union, and that the "sole purpose" of the adjustment's postponement is to avoid the appearance of influencing the election's outcome. *KMST-TV, Channel 46, 302 NLRB 381, 382 (1991)*, quoting *Atlantic Forest Products, 282 NLRB 855, 858 (1987)*. "[I]n making such announcements, however, an employer must avoid attributing to the union 'the onus for the postponement of adjustments in wages and benefits,' or disparag[ing] and undermin[ing] the [union] by creating the impression that it stood in the way of their getting planned wage increases and benefits.'" Atlantic Forest Products, supra at 858, quoting in part *Uarco, Inc., 169 NLRB 1153, 1154 (1969)*.

b. The Analysis

The statements by Rivera in September 2001 to drivers concerning wage increases that “money is there, but we had to wait for a union contract” and that the drivers, “messed it up. You could have waited, you should have waited. The money was there, you guys messed it up” and again in November 2001 that drivers were “getting a raise after the union process is over . . . they needed to wait for the first contract so they can add the wages, the rates to the new contract increase” are similar to the type of statements prohibited by *Atlantic Forest Products,* supra, *Rural /Metro Medical Services, 327 NLRB 49 (1998)* and *Canteen Co., 309 NLRB 698 (1992)*. Both Williams and Ngo echoed Rivera’s statements. In late 2001 or in early 2002,

Williams, during an employee meeting, in response to an employee's question about when they were getting raises said, "the company is negotiating with the Union . . . and we can't negotiate one-on-one. . . " In March or April 2001, Respondent's owner, Ngo, in answering employees' questions about when they would get a raise said that he, "couldn't do anything at that time because of the Union" and that it was as though his hands were tied and "everything has to be handled through lawyers and the Union." These statements likewise undermined the Union by creating the impression that it stood in the way of drivers getting planned wage increases. Atlantic Forest Products, supra.

I find that the statements by Rivera, Williams and Ngo violated Section 8(a)(1) of the Act.

2. The Information Request

a. The Law

It is well settled that when a request for relevant information adequately informs the employer of the data needed, the employer must supply the information or adequately explain why it is unable to comply. *Kroger Co., 226 NLRB at 513.* Moreover, belated compliance cannot retroactively cure the unlawful refusal to supply the information. *U.S. Gypsum Co., 200 NLRB 305, 308 (1972)*; see also *Postal Service, 276 NLRB at 1288*.

When the requested information pertains to employees outside the bargaining unit, however, the union has the "initial burden to show relevancy." *NLRB v. Associated General Contractors, 633 F.2d 766, 770 (9th Cir. 1980), cert. denied 452 U.S. 915 (1981)*. This burden is not a heavy one. "The Supreme Court has adopted a liberal, discovery-type standard by which relevancy of requested information is to be judged." *NLRB v. Leonard B. Hebert, Jr. & Co., 696 F.2d 1120, 1124 (5th Cir. 1983)*, citing Acme Industrial, supra. The Union need only be "acting upon the probability that the desired information [is] relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industrial Co., 385 U.S. 432, 435- 436 (1967).*

b. The Analysis

In the instant case, Respondent by its letter of November 27, 2001 put the Union on notice that bargaining unit jobs could be lost due to the opening of its Southern California facility. The letter invited bargaining on this subject. Respondent, at the bargaining session on November 27, 2001, confirmed that bargaining unit jobs could be lost due to the opening of the Southern California facility. The Union has established the relevance and necessity of the information it requested in its December 14, 2001 letter to Respondent concerning the Southern California facility. All of the information was relevant to the Union's bargaining obligation and the impact on jobs in the bargaining unit, including the location, size, hours of operation, numbers and classifications of employees and trucks at the new facility. *Barnard Engineering Co., 282 LRB 617 (1987); Leland Stanford Junior University, 262 NLRB 136 (1982)*. I find Respondent's refusal to provide the requested information in a timely manner violated Section 8(a)(5) of the Act.

2. The Unilateral Changes in Conducting 2002 Performance Evaluations and Withholding 2002 Wage Increases.

a. The Law

The Board has explained what an employer's obligation is when the existing term of employment involves the annual grant of discretionary merit raises. *Daily News of Los Angeles,*

315 NLRB 1236 (1994). The Board stated that the same bargaining obligation applies whether the issue involved is the employer's unilateral granting of merit increases or its unilateral discontinuance of them, reciting the following passage from *Oneita Knitting Mills, 205 NLRB 500 fn. 1 (1973)* a case, like here, involving an employer who had a practice of annually reviewing employees in order to determine the amount of a merit increase to award:

> An employer with a past history of a merit increase program neither may discontinue that program (as we found in Southeastern Michigan) nor may he any longer continue to unilaterally exercise his discretion with respect to such increases, once an exclusive bargaining agent is selected. What is required is a maintenance of preexisting practices, i.e., the general outline of the program, however the implementation of that program (to the extent that discretion has existed in determining the amounts or timing of the increases), becomes a matter as to which the bargaining agent is entitled to be consulted.

b. The Analysis

In this case Respondent concedes that for many years it had a past practice of reviewing employees' performance and granting discretionary wage increases based upon those evaluations. However, while reviewing employees in September 2002, Respondent did not present the drivers with the evaluations nor did it grant the wage increases in 2002. At no time did Respondent and the Union agree to the discontinuance of the 2002 reviews or wage increases. When Respondent failed to provide its drivers with their evaluations and did not give their annual wage increases in 2002, it failed to maintain its existing practice and violated Section 8(a)(5) of the Act. *Daily News of Los Angeles*, supra.

3. The Withdrawal of Recognition

a. The Law

To foster collective bargaining and industrial stability, the Board has long held that a certified union's majority status ordinarily cannot be challenged for a period of one year. *Centr-O-Cast & Engineering Co., 100 NLRB 1507, 1508 (1952)*. If a representation petition is filed before the end of the certification year, the Board will dismiss it because "the mere retention on file of such petitions, although unprocessed, cannot but detract from the full import of a Board certification, which should be permitted to run its complete 1-year course before any question of the representative status of the certified union is given formal cognizance by the Board." *Id. at 1508-1509.*

At the end of the certification year, an incumbent union continues to enjoy a presumption of majority status. However, an employer may rebut that presumption and withdraw recognition from the union on a showing that the union has, in fact lost the support of a majority of the employees in the bargaining unit. *Levitz, 333 NLRB No. 105 slip op. at 8-9 (2001)*. The burden rests with the employer to show the actual loss of majority support. *Id. at 8*.

Even if there is evidence of a loss of majority support for the union, the employer may not withdraw recognition if there are serious unremedied unfair labor practices that may have tainted the employee expressions of disaffection for the incumbent union. *Vincent Industrial Plastics, 328 NLRB 300, 301 (1999)*; supplemented by *336 NLRB No. 50 (2001)*. The Board examines the following factors to determine whether it may infer that unremedied unfair labor practices have caused the union's subsequent loss of majority support: (1) the length of time

between the violations and the subsequent loss of majority support; (2) the nature of the violations, including the possibility of a detrimental or lasting effect on employees; (3) the tendency of the violation to cause disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities and union membership. *Master Slack Corp., 271 NLRB 78, 84 (1984)*.

b. The Analysis

There were 17 drivers in the bargaining unit when Respondent withdrew recognition on December 4, 2002. Respondent must establish it had evidence that at least nine drivers no longer wished to be represented by the Union when it withdrew recognition. Respondent presented evidence that, in withdrawing recognition from the Union, it relied on the petition prepared by Nguyen and conversations Jacobsen had with four drivers.

The Nguyen petition, when presented to Respondent, on its face did not state its purpose, as the preamble had been crossed out. Thus, Respondent could not rely on the petition itself to glean the drivers' intent. Moreover, assuming arguendo, that the Respondent was informed the petition's purpose was to get the Union out, its words, the drivers "Want to Withdraw From the Union 853" at best convey to Respondent that the drivers wanted to withdraw their membership from the Union rather that indicating they no longer wished to be represented by the Union. Respondent cannot rely on the conversations it had with Nguyen and Mendehall to clarify the petition's ambiguity. While Nguyen and Mendehall told Jacobsen the purpose of the petition was to get the Union out, it is the individual drivers' intent in signing the petition that is crucial to determine if the Union had lost majority support. In view of the ambiguity of the preamble, it cannot be objectively determined whether drivers realized they were signing to withdraw from membership in the Union or to indicate they no longer wished to be represented by the Union.

As of December 4, 2002, the only other evidence Respondent had that the Union had lost support was from the conversations Jacobsen had with four drivers. Jacobsen's conversations with Nguyen, Mendenhall, Minh and Calderon were insufficient to establish that the Union had lost majority support. These conversations were limited to these four drivers' desire to get out of the Union and some vague reference by Calderon to other drivers. I find that Respondent has failed to rebut the presumption that the Union continues to enjoy majority support among its drivers. *Levitz, 333 NLRB No. 105 (2001)*.

Moreover, I have found that there were unremedied unfair labor practices at the time Respondent withdrew recognition from the Union. In determining if the unfair labor practices tainted the employees' expression of dissatisfaction, I must consider the factors enumerated by the Board in *Master Slack Corp., 271 NLRB 78, 84 (1984)*.

Respondent committed unfair labor practices from September 2001 through October 2002, telling employees that there would be no pay raises because of the negotiations with the Union, withholding evaluations and merit wage increases. There is a clear nexus between these unfair labor practices and the employee' expressions of dissatisfaction that culminated in the decertification petition circulated in late October and early November 2002 which Respondent relied upon in withdrawing recognition from the Union. These unfair labor practices were designed to disaffect Respondent's employees from the Union. Employees said they signed the petition because they believed they had to get out of the Union to get a raise. General Counsel has established that each of the four Master Slack factors are present in this case and I conclude that Respondent's unfair labor practices caused the Union's loss of majority status.

I find for all of the reasons set forth above that by withdrawing recognition from the Union, Respondent violated Section 8(a)(1) and (5) of the Act.

4. The 2002 Bonus

As noted above, an employer with a past history of a discretionary merit increase program may neither discontinue that program nor continue to unilaterally exercise its discretion with respect to such increases, once an exclusive bargaining agent is selected. *Daily News of Los Angeles, 315 NLRB 1236 (1994)*.

In this case at the end of December 2002, Respondent unilaterally granted an annual bonus to its drivers at a time the Union continued to enjoy the presumption of majority support. In doing so Respondent violated Section 8(a)(1) and (5) of the Act.

Conclusions of Law

By telling employees that they would not receive a pay raise due to the Union, failing to provide information to the Union relevant to its duty as exclusive collective bargaining representative, discontinuing its practice of conducting performance reviews of unit employees, discontinuing annual merit wage increases to unit employees, granting discretionary year-end bonuses to unit employees and withdrawing recognition from the Union, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent must recognize and bargain with Teamsters Local 853, IBT, AFL-CIO as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time truck drivers employed by Respondent at its 2390 Jerrold Avenue, San Francisco, California facility; excluding all other employees, office clerical employees, warehouse employees, guards and supervisors as defined in the Act

Further having found that Respondent violated Section 8(a)(1) and (5) of the Act by failing to grant annual merit pay raises in October 2002, I shall recommend that Respondent be ordered to make whole each employee for loss of the annual raise. Back pay shall be calculated as prescribed in F.W. Woolworth Co., 90 NLRB 289 (1950), plus interest as computed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and

Continued

ORDER

The Respondent, H & N Foods International d/b/a H & N Fish Co., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that they would not receive a pay raise due to the Union.

(b) Failing to provide information to the Union relevant to its duty as exclusive collective bargaining representative.

(c) Discontinuing its practice of conducting performance reviews of unit employees.

(d) Discontinuing its practice of granting discretionary annual merit wage increases to unit employees.

(e) Unilaterally granting discretionary year-end bonuses to unit employees.

(f) Withdrawing recognition from the Union as the exclusive representative of the employees in the following appropriate unit:

> All full-time and regular part-time truck drivers employed by Respondent at its 2390 Jerrold Avenue, San Francisco, California facility; excluding all other employees, office clerical employees, warehouse employees, guards and supervisors as defined in the Act

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time truck drivers employed by Respondent at its 2390 Jerrold Avenue, San Francisco, California facility; excluding all other employees, office clerical employees, warehouse employees, guards and supervisors as defined in the Act

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place

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Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Make our employees whole for unilaterally failing to grant merit pay increases in October 2002.

(d) Within 14 days after service by the Region, post at its facility in San Francisco, California copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 2001.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, May 28, 2003, San Francisco, California.

_____
John J. McCarrick
Administrative Law Judge

[6] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union,
Choose representatives to bargain with us on your behalf,
Act together with other employees for your benefit and protection,
Choose not to engage in any of these protected activities.

WE WILL NOT tell employees that they will not receive a pay raise due to the Union.

WE WILL NOT fail to provide information to the Union relevant to its duty as exclusive collective bargaining representative.

WE WILL NOT discontinue our practice of conducting annual performance reviews of unit employees.

WE WILL NOT discontinue our practice of granting annual merit wage increases to unit employees.

WE WILL NOT unilaterally grant discretionary year-end bonuses to unit employees.

WE WILL NOT withdraw recognition from the Union as the exclusive representative of the employees in the following appropriate unit:

All full-time and regular part-time truck drivers employed by Respondent at its 2390 Jerrold Avenue, San Francisco, California facility; excluding all other employees, office clerical employees, warehouse employees, guards and supervisors as defined in the Act

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time truck drivers employed by Respondent at its 2390 Jerrold Avenue, San Francisco, California facility; excluding all other employees, office clerical employees, warehouse employees, guards and supervisors as defined in the Act

WE WILL, make our employees whole for unilaterally failing to grant merit pay increases in October 2002.

JD(SF)–32-03
San Francisco, CA

H & N FOODS INTERNATIONAL d/b/a
H & N FISH CO.

_____
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

901 Market Street, Suite 400, San Francisco, CA 94103-1735

(415) 356-5130, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (415) 356-5139.